

RESOLUTION NO. 2006-84

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING THE CITY MANAGER TO EXECUTE TASK ORDER WITH TREADWELL & ROLLO FOR PCE CENTRAL PLUME REMEDIATION PHASE 1 DUAL PHASE (SOIL VAPOR AND GROUNDWATER) EXTRACTION PROJECT; AND FURTHER TO AMEND THE 2004 MASTER AGREEMENT WITH TREADWELL & ROLLO TO UPDATE HOURLY RATES

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NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to execute Task Order with Treadwell & Rollo for PCE Central Plume Remediation Phase 1 Dual Phase (Soil Vapor and Groundwater) Extraction Project in an amount not to exceed \$302,000; and

BE IT FURTHER RESOLVED that the City Manager is further authorized to amend the 2004 Master Agreement with Treadwell & Rollo to update hourly rates.

Dated: May 3, 2006

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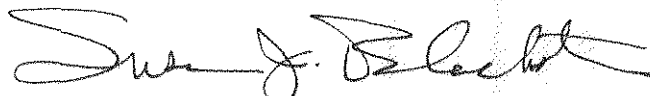
I hereby certify that Resolution No. 2006-84 was passed and adopted by the City Council of the City of Lodi in a regular meeting held May 3, 2006, by the following vote:

AYES: COUNCIL MEMBERS – Beckman, Hansen, Johnson, Mounce,  
and Mayor Hitchcock

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None



SUSAN J. BLACKSTON  
City Clerk

**TECHNICAL SERVICES TASK ORDER AGREEMENT  
FOR PROFESSIONAL SERVICES  
BETWEEN THE CITY OF LODI  
AND  
TREADWELL & ROLLO, INC.**

THIS TASK ORDER AGREEMENT, hereinafter referred to as "Agreement," made and entered into on this 22<sup>nd</sup> day of April 2004, by and between the City of Lodi, hereinafter referred to as "Client," and Treadwell & Rollo, Inc., hereinafter referred to as "Consultant."

WITNESSETH:

WHEREAS, Client is proceeding with participation in remediation studies and possible work in connection with PCE and TCE soil and groundwater contamination in Lodi referred to in draft administrative orders from the State of California Regional Water Quality Control Board and Department of Toxics Substances Control, that requires the services of a consultant; and

WHEREAS, Consultant has available and offers to provide personnel and facilities necessary to accomplish such work as may be requested by Client;

NOW, THEREFORE, Client and Consultant agree as follows:

**I. DESCRIPTION OF PROJECT**

Services provided shall be as described in written task orders made pursuant to and referencing this Agreement, but in general shall include engineering, analytical services, and litigation support.

**II. SCOPE OF SERVICES**

Consultant agrees to perform those services described in separate written task orders signed by Client and Consultant. Unless modified in writing by both parties, duties of Consultant shall not be construed to exceed those services specifically described in each task order.

**III. TIME FOR COMPLETION**

The time for completion of work shall be as identified in each task order issued pursuant to this Agreement.

**IV. COMPENSATION**

For services to be performed by Consultant, as described in each task order, Client agrees to pay, and Consultant agrees to accept, compensation as identified in each task order. Consultant shall invoice Client on a time and materials cost basis for services provided under this Agreement in accordance with the Billing Rate Schedule contained in Exhibit A unless task orders specifically indicate otherwise.

Subject to Section XVII of this agreement, Consultant may augment in-house personnel with subconsultants. Hourly rate for subconsultants shall not exceed those for equivalent in-house personnel.

Consultant shall submit invoices for services as prescribed in each task order. Client shall pay such invoices within 30 days after their receipt. If payment is not made within 30 days, interest on the unpaid balance will accrue at a rate of one (1) percent per month compounded monthly.

#### V. RESPONSIBILITY OF CONSULTANT

Consultant agrees that in undertaking the duties to be performed hereunder, it shall act as an independent consultant for and on behalf of Client. Client shall not direct the work and means for accomplishment of the services and work to be performed hereunder. Client, however, retains the right to require that work performed by Consultant meet specific standards without regard to the manner and means of accomplishment thereof.

Consultant shall perform the Services in a manner consistent with the level of care and skill ordinarily exercised by consultants performing comparable services under comparable circumstances in the general location of the Project Site. Notwithstanding any provision of this Agreement, Consultant makes no representation, warranty or guarantee, express or implied, and expressly disclaims any representations, warranties or guarantees, whether made orally or in writing, and whether made prior to or contemporaneously herewith.

#### VI. OWNERSHIP OF DOCUMENTS

All documents and other materials obtained, prepared, or created by Consultant shall be owned by Client. Consultant shall have the right to retain copies of such materials.

#### VII. NO THIRD PARTY RELIANCE

Consultant and Client agree that all analyses, findings, conclusions and recommendations of Consultant made pursuant to this Agreement are for the sole benefit of Client and may not be relied on by any other person.

#### VIII. INDEMNIFICATION

To the fullest extent permitted by law, Consultant shall indemnify and hold harmless Client, their directors, officers, and employees from and against claims, damages, losses, and expenses (including reasonable attorneys' fees) whether incurred in a third party action or in an action brought by Client against Consultant to enforce Client's rights under this provision, arising out of performance of the work, provided that any such claim, damage, loss, or expense is caused by negligent acts or omissions of Consultant, any subconsultant employed directly by Consultant, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable.

Client agrees to indemnify, defend and save harmless Consultant, its officers, agents and employees, and any subcontractors employed by Consultant incident to this Agreement, from and against all losses, claims, costs, damages, liabilities and other expenses, including reasonable

attorneys' fees (whether incurred in a third party action or in an action brought by Consultant against Client to enforce Consultant's rights under this provision) arising out of (a) material breach or failure to perform any material provision of this Agreement by Client, or (b) the negligence, gross negligence, or willful misconduct of Client.

#### IX. HEALTH AND SAFETY

Client assumes all responsibility for the health and safety of all persons affected by the Project Site or the Services, except the Consultant and persons under the direct control, supervision, or direction of the Consultant.

#### X. INSURANCE

Consultant shall procure and maintain the following insurance policies, each of which shall provide primary coverage with respect to work performed under this Agreement.

1. Comprehensive General Liability Insurance. Insurance including premises/operations, products/completed operations, blanket contractual, and broad-form property damage liability coverages. The combined single limit for bodily injury and property damage shall not be less than \$1,000,000 per occurrence, and \$2,000,000 per year in aggregate.
2. Automobile Bodily Injury and Property Damage Liability. Insurance covering owned (if any), non-owned, rented, and leased cars. The limit shall not be less than \$1,000,000 per occurrence.
3. Workers' Compensation and Employer's Liability. Insurance as prescribed by applicable law, including liability under the Longshoreman's and Harbor Workers' Act and the Jones Act, if applicable. The employer's liability limit shall not be less than \$1,000,000.
4. Professional Liability Insurance. Insurance covering losses resulting from errors or omissions of the Consultant. The limit of liability shall not be less than \$1,000,000 per claim and in the aggregate.

Should Consultant or any of its officers, employees, or agents be found to have been negligent in the performing of professional services or work, or to have breached any express or implied warranty, breached any representation or any provision of this Agreement, Client, all persons or entities claiming through Client and all persons or entities claiming to have in any way relied upon or been damaged by Consultant's services or work agree that the maximum aggregate amount of the liability of Consultant, its officers, employees and agents shall be limited to the total amount of the fee paid to Consultant by Client for its work performed with respect to the project, or \$500,000, whichever is greater. The Agreement price is predicated on this limitation of liability. Should Client object to this provision, then the Agreement price will be renegotiated by Consultant and Client to account for the increase in Consultant's potential liability. Any objection by Client to this limitation on liability must be conveyed to Consultant before Client's acceptance of this Agreement.

## XI. ASSIGNMENT

This Agreement is binding on the heirs, successors, and assigns of the parties hereto. This Agreement may not be assigned by either Client or Consultant without the prior written consent of the other.

## XII. BENEFIT

Except as herein provided, this Agreement shall inure to the benefit of the assigns, heirs, and successors of the parties to this Agreement.

## XIII. TERMINATION

Client may terminate this Agreement for its convenience. Consultant shall be compensated for work performed to the date of termination including a reasonable amount for profit on work accomplished and cost to terminate work.

In the event Consultant shall persistently fail to perform services and work hereunder in a manner satisfactory to Client, this Agreement may, at Client's option, be terminated. Consultant shall be compensated for completed and useful work performed to the date of termination.

Client or Consultant may terminate this Agreement at any time on 30 days prior written notice to the other party.

This Agreement shall terminate without any action of a party in the event either Client or Consultant becomes insolvent or subject to proceedings under any law relating to bankruptcy, insolvency or the relief of debtors.

## XIV. RIGHT OF INSPECTION AND AUDIT

Client shall at reasonable times during the term of this Agreement have reasonable access to inspect and audit project-related documents and other materials resulting from Consultant's activities pursuant to this Agreement. Client shall reimburse Consultant for Consultant's reasonable costs in assisting with any such inspections and audits.

## XV. JURISDICTION

This Agreement shall be administered and interpreted under the laws of the State of California. Jurisdiction of litigation arising from this Agreement shall be in that state. If any part of this Agreement is found to conflict with applicable laws, such part shall be inoperative, null, and void insofar as it is in conflict with said laws, but the remainder of this Agreement shall be in full force and effect.

No provision of this Agreement shall be construed for or against any party on the basis of its contribution, or lack of contribution, to the drafting of such provision, and the provisions of Section 1654 of the California Civil Code shall have no application to this Agreement. The failure of any party to enforce any provision of this Agreement shall not in any way be construed as a waiver of

any such provision and shall not prevent that party from thereafter enforcing such or any other provision of this Agreement.

#### XVI. NON-BINDING MEDIATION

Any dispute or controversy between the parties relating to this Agreement shall be attempted to be resolved in good faith pursuant to non-binding mediation. The parties shall attempt to select the mediator by mutual agreement. If they are unable to do so within fifteen (15) calendar days from the date the dispute is first identified by the party first to assert a claim, the party first asserting one or more claims shall provide the other party with a written list of names of five (5) potential mediators. The other party shall either select the mediator from such list, or shall provide the other party with a written list of names of five (5) additional potential mediators. The mediator thereupon shall be selected from such list of ten (10) names by the parties alternately striking names from such list, the first party to strike a name being selected by the parties' flip of a coin. The last name remaining to be stricken from the list shall be the mediator. The parties shall proceed to resolve the dispute through non-binding mediation within forty-five (45) calendar days from the date of the mediator's selection, or such longer period as the parties may mutually agree upon. If the parties are unable to resolve the dispute by such means after making every reasonable effort to do so, the parties thereafter may pursue such other remedies as may be available to them under the provisions of this Agreement and pursuant to the laws of the State of California. The paragraph shall not apply to claims made by Consultant pursuant to Mechanics Lien laws.

#### XVII. INTEGRATION

This Agreement represents the entire understanding of Client and Consultant as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing, signed by both parties.

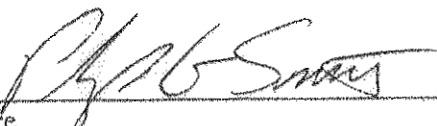
#### XVIII. SUBCONTRACTS

Except with prior written approval of Client, Consultant shall not enter into any subcontract with any other party for purposes of providing any work or services covered by this Agreement.

#### XIX. NOTICES

Any notice to a party in connection with this Agreement must be in writing and addressed to the party at its address as set forth in the Task Order, or such other address or addresses as to which the parties may notify each other from time to time. Any notices made to Consultant shall be addressed to Consultant's project manager or principal in charge of the project described in the Task Order. All notices made hereunder shall be deemed effective on receipt. Client shall notify Treadwell & Rollo, Inc. by certified mail of any change of ownership or any information provided on the Acceptance of Proposal on Authorization to Proceed. In the event client fails to notify, in writing by certified mail, any changes, Client shall be liable for all credit extended prior to said written notification as though no changes in fact occurred, without prejudice to Client's right to proceed, additionally against all successors.

TREADWELL & ROLLO, INC.

  
Signature

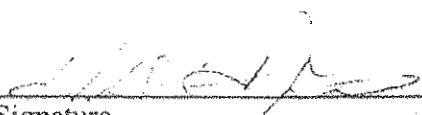
Philip Smith  
Printed Name

Principal  
Title

4/27/04  
Date

attachment

CITY OF LODI

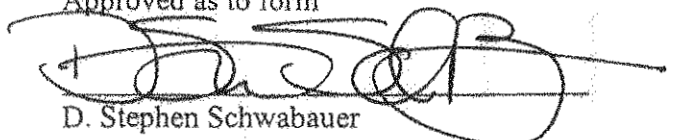
  
Signature

H. Dixon Flynn  
Printed Name


City Manager  
Title

May 19, 2004  
Date

Approved as to form

  
D. Stephen Schwabauer  
Interim City Attorney

ATTEST:

  
SUSAN J. BLACKSTON  
City Clerk

## Exhibit A

### Billing Rate Schedule

| <u>Position</u>                  | <u>Billing Rate</u><br><u>(dollars per hour)</u> |
|----------------------------------|--|
| Philip Smith                     | 207  |
| Michael McGuirer                 | 184  |
| Dorinda Shipman, Patrick Hubbard | 166  |
| David Dixon, Glenn Leong         | 146  |
| Michael Chamberlain              | 121  |
| Joshua Graber                    | 106  |
| Other Staff                      | 8% below<br>standard rates                       |

Direct expenses (telephone, reproduction, postage, etc.) will be billed at actual cost.

Mileage will be billed at \$0.35 per mile.

Travel time will be included at the appropriate hourly rate either at 50% or one-way only.

Subconsultants as approved by the City will be billed at actual cost plus 10%.

### EQUIPMENT CHARGES

|   |                     |                                 |
|---|---------------------|---------------------------------|
| Vans, Trucks                            | \$13.50/hr          | (travel time plus time on site) |
| Nuclear Moisture-Density Guage          | \$12.50/hr          |                                 |
| Special Computer or Analytical Software | \$30.00/hr          |                                 |
| Other Equipment                         | As approved by City |                                 |